

UNITED STATES DISTRICT COURT
for the
District of New Mexico



In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

THE BODY OF DWAYNE A. CALVERT, YOB 1989

Case No. **23 MR 1309**

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, incorporated herein by reference.

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, incorporated herein by reference.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

| Code Section | Offense Description |
|------------------------|---------------------------------------|
| 18 U.S.C. § 1153 | Sexual Abuse, an Indian Country crime |
| 18 U.S.C. § 2242(2) | |
| 18 U.S.C. § 2246(2)(A) | |

The application is based on these facts:

See the attached affidavit of BIA Special Agent Jerome Mirabal, which is incorporated by reference and has been reviewed and approved by AUSA Zach Jones.

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet

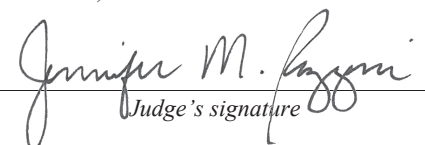

Applicant's signature

BIA Special Agent Jerome Mirabal
Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
Telephonically Sworn and Electronically Signed (specify reliable electronic means).

Date: 06/29/2023

City and state: Albuquerque, NM


Judge's signature
Jennifer M. Rozzoni, United States Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN THE MATTER OF THE SEARCH OF:

THE BODY OF DWAYNE A. CALVERT,
YOB 1989

Case No.

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF AN APPLICATION UNDER RULE 41
FOR A WARRANT TO SEARCH AND SEIZE**

I, Jerome Mirabal, a Special Agent (SA) with the Bureau of Indian Affairs (BIA), being duly sworn, hereby depose and state as follows:

INTRODUCTION

1. This affidavit is in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the body of Dwayne A. CALVERT (YOB 1989), to collect deoxyribonucleic acid (DNA) samples by way of buccal swabs. There is probably cause to believe CALVERT's DNA may be present on several items previously submitted for serological testing to the New Mexico Department of Public Safety Forensic Laboratories (NMDPS), to include vaginal swabs, cervical swabs, anal swabs, mons pubis/outer labia majora swabs, "speculum" swabs, and underwear.

2. Affiant is investigating whether CALVERT committed the offense of Sexual Abuse, an Indian Country crime, in violation of 18 U.S.C. §§ 1153, 2242(2), and 2246(2)(A), on or about July 2, 2022. The alleged victim is a female with initials D.Q, YOB 1998, hereinafter referred to as JANE DOE.

3. Defendant is not currently in custody.

4. Because this affidavit is submitted for the limited purpose of seeking a search warrant to collect DNA samples from CALVERT, I have not set forth every fact I have learned

during this investigation. I have set forth only facts I believe are necessary to establish the foundation for an order authorizing the requested search warrant.

PURPOSE OF THE AFFIDAVIT

5. There is probable cause to believe CALVERT committed Sexual Abuse, an Indian Country crime, in violation of 18 U.S.C. §§ 1153, 2242(2), and 2246(2)(A). Because there is probable cause to believe CALVERT committed this crime, there is also probable cause to believe CALVERT's DNA will be found on several pieces of evidence collected in this criminal investigation. Therefore, probable cause exists to collect a DNA sample from CALVERT via buccal swab to compare it with samples collected from lawfully seized evidence in this case.

AFFIANT'S RELEVANT TRAINING AND EXPERIENCE

6. I am a Special Agent with the Bureau of Indian Affairs, Office of Justice Services (OJS) assigned to criminal investigations on major crimes. I have been so employed since March 2023. I am classified, trained, and employed as a federal law-enforcement officer with statutory arrest authority charged with conducting criminal investigations of alleged violations of federal criminal statutes, including Title 18 of the United States Code.

7. I am currently a criminal investigator for the Bureau of Indian Affairs with the Northern Pueblos Agency. My duties are to investigate major crimes which occur on Native American reservations to which I am assigned. I have investigated numerous crimes including, but no limited to sexual assaults, domestic violence, and aggravated assaults. I have approximately 20 years of law-enforcement experience, thirteen of which are with the BIA. Within the BIA I have served as a Police Officer, Indian Police Academy Instructor, and Supervisory Police Officer/Lieutenant. I have completed Basic Police Training with the United States Indian Police Academy at the Federal Law Enforcement Training Center (FLETC) in Artesia, NM. I hold several

advanced instructor certifications, which I earned at FLETC. I have extensive in-service and technical training in different aspects of law enforcement.

8. I know from my training and experience that DNA is a critical component of modern police work. I have received training on how DNA samples should be collected, as well as how DNA samples can be used to solve crimes. I have furthermore participated in the collection of DNA samples as a component of my investigatory work.

FACTS AND CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE

9. On Friday, July 1, 2022, JANE DOE socialized with a group of people at Ohkay Hotel Casino. JANE DOE consumed alcohol throughout the night. When the casino bar closed at 2:00 am, the group went to A.A.'s home to continue drinking and socializing.

10. CALVERT was babysitting A.A.'s son at A.A.'s apartment while the group was at the casino. CALVERT began to drink with the group after the group returned to A.A.'s apartment after 2:00 am on Saturday, July 2, 2022.

11. A.A.'s apartment is located at 100 Tsigo Bugeh Road, within the exterior boundaries of the Pueblo of Ohkay Owingeh. CALVERT is an enrolled member of the Pueblo of Ohkay Owingeh. JANE DOE is an enrolled member of the Pueblo of Cochiti.

12. JANE DOE was intoxicated when she arrived at A.A.'s apartment. JANE DOE continued to drink until she fell from a chair. A.A. put JANE DOE to bed on A.A.'s couch. The party continued as A.A. slept.

13. At about 3:30 am, the party concluded. CALVERT asked to sleep over, which A.A. thought was odd; A.A. nevertheless allowed him to do so. A.A. and J.T. (A.A.'s live-in boyfriend) went to their upstairs bedroom, leaving JANE DOE asleep on the couch. CALVERT was to sleep on a mattress on the living-room floor.

14. About 10 minutes later, A.A. heard a moan from downstairs, which prompted her to investigate. Proceeding down the stairs, A.A. and J.T. saw CALVERT naked on top of JANE DOE, having sex with her. JANE DOE was not awake.

15. A.A. and J.T. startled CALVERT, who said the sex was consensual. A.A. yelled and hit CALVERT. CALVERT gathered his clothes and left A.A.'s apartment, but not before A.A. made CALVERT re-clothe JANE DOE

16. JANE DOE remained unconscious throughout. After CALVERT left, A.A. remained by JANE DOE's side. JANE DOE urinated on the couch as she slept.

17. Once JANE DOE was awake in the morning, A.A. told JANE DOE about the incident that occurred hours earlier. JANE DOE had no memory of it. They called police to report the crime. As they waited for police, CALVERT returned to get his baseball glove. CALVERT apologized to A.A. and JANE DOE.

18. JANE DOE underwent a SANE exam that morning at Solace Crisis Treatment Center in Santa Fe. JANE DOE had no memory of the rape. She denied being in any pain and had no injuries.

19. BIA Agent Nicholas Miller thereafter submitted JANE DOE's sexual-assault-evidence kit to NMDPS Forensic Laboratories for serological testing.

20. On March 20, 2023, an NMDPS forensic scientist issued a report, stating the vaginal swabs, cervical swabs, anal swabs, mons pubis/outer labia majora swabs, "speculum" swabs, and JANE DOE's underwear "may be eligible for male Y-STR DNA testing; however, a male DNA standard must be submitted prior to testing." The purpose of this warrant is to obtain this male DNA standard.

21. Based on the foregoing, there is probable cause to believe the DNA sample sought will provide evidence pertaining to a violation of Sexual Abuse, an Indian Country crime, in violation of 18 U.S.C. §§ 1153, 2242(2), and 2246(2)(A).

22. The buccal-swab samples will be obtained from CALVERT pursuant to approved procedures, without unnecessary discomfort to CALVERT, in private, and under circumstances where he will feel little or no pain or embarrassment.

23. After collection, Affiant will ship CALVERT's swabs to NMDPS Forensic Laboratories for comparison testing, specifically male Y-STR DNA testing.

24. CALVERT is a Native American male. He was born in 1989. His Social Security number ends in 4549. I know CALVERT to reside in the Ohkay Owingeh area. A picture of CALVERT is included within Attachment A.

CONCLUSION

25. There is probable cause to believe CALVERT committed Sexual Abuse, an Indian Country crime, in violation of 18 U.S.C. §§ 1153, 2242(2), and 2246(2)(A), and that the DNA samples sought will provide evidence of that crime. Therefore, I am seeking authorization under Rule 41 of the Federal Rules of Criminal Procedure to collect a DNA sample from CALVERT, via buccal swab, to compare with any DNA found in JANE DOE's sexual-assault-evidence kit.

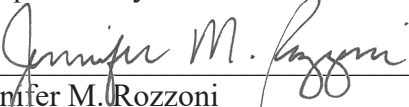
26. This affidavit has been reviewed and approved by Assistant United States Attorney Zach Jones.

Respectfully submitted,



Jerome Mirabal, Special Agent
Bureau of Indian Affairs

Telephonically sworn and electronically signed on June 29, 2023:



Jennifer M. Rozzoni
United States Magistrate Judge

ATTACHMENT A
PERSON TO BE SEARCHED

Dwayne A. CALVERT was born on June 6, 1989. CALVERT has a Social Security number ending in 4549. CALVERT is an enrolled tribal member of the Pueblo of Ohkay Owingeh. He currently or did reside at 310 N.M. Highway 74, Ohkay Owingeh, NM 87566. CALVERT is approximately 5'9", weighs 145 pounds, and has black hair and brown eyes.

CALVERT is pictured below:



ATTACHMENT B

PROPERTY TO BE SEIZED BY THE GOVERNMENT

The following material, which constitute evidence of the commission of a criminal offense, namely violations of 18 U.S.C. §§ 1153, 2242(2), and 2246(2)(A), that being Sexual Abuse in Indian Country:

1. Affiant will use minimally invasive DNA buccal swabs to collect samples of DNA from CALVERT.